12 FEB 1974

MEMORANDUM FOR: Legislative Counsel

STATINTL ATTENTION : [redacted]

SUBJECT : S. 1726, A Bill to Amend the Freedom of Information Act

1. Pursuant to your request of 4 February 1974, we have reviewed your draft memorandum to Senator Ervin and have rewritten it to include some additional data and some minor editorial changes.

2. Please advise if we can be of any further assistance in this matter.

STATINTL

[redacted]
Howard J. Osborn
Director of Security

cc: C/ISAS
EO-DD/M&S

DRAFT

Honorable Sam J. Ervin, Jr., Chairman
Senate Committee on Government Operations
United States Senate
Washington, D.C. 20510

Dear Chairman Ervin:

This is in reply to your letter dated 11 May 1973, requesting our views concerning S. 1726, which establishes guidelines and limitations for the classification of information and the disclosure of such information to the Congress and the public.

S. 1726 establishes a statutory program for the classification, declassification, and protection of Government information by amending the Freedom of Information Act. Except for Restricted Data, all classified information, including intelligence sources and methods, would be affected.

The Central Intelligence Agency clearly recognizes that all elements of our Government and the electorate must be adequately informed on matters of national importance. However, there are certain considerations that must be borne in mind. The role of CIA is to provide support to the President and the National Security Council by maintaining a coordinated, effective and timely

collection and analysis program covering foreign intelligence. The success of the program is dependent upon productive sources and effective methods of collection and analysis which meet national requirements. If security is not properly regarded and sources and methods are revealed, the foreign intelligence effort would be critically affected. This was recognized by the Congress in the National Security Act of 1947, as amended, (50 U.S.C.A. 403), Section 102(d)(3), which provides as follows:

> "...And provided further, That the Director of Central Intelligence shall be responsible for protecting intelligence sources and methods from unauthorized disclosure."

The Agency, under the present Freedom of Information Act and Executive Order 11652, has established a program to handle outside requests for information. Disclosures under the Act and Executive Order, however, have admittedly been limited because of the necessity to protect intelligence sources and methods and other considerations affecting Agency operations. The passage of time alone for declassification does not always provide adequate protection. Therefore, every classified document which might disclose intelligence sources and methods must be carefully reviewed prior to a declassification decision. Disclosures of information revealing past activities can well jeopardize present and future operations and individuals. This

review, therefore, is extensive and includes all related and corollary information affected by the disclosure.

The existing Freedom of Information Act provides protection to intelligence sources and methods by expressly exempting classified information. We question whether the much broadened program of declassification and dissemination to be established by S. 1726 is consistent with the protection of the information involved.

Section 104 provides for the automatic declassification of information unless the President or agency head personally and in detail justifies, in writing, that the information requires continued protection. The justification is not delegable and must be submitted to the Comptroller General and to the Government Operations Committees of House and Senate for review by any member or committee of Congress. No classified information may be withheld from any member or committee of Congress. Any person may bring court action and require a court review de novo of the sufficiency of the classification of any material deferred from declassification. Noncompliance with a court order subjects an agency head to contempt.

The above provisions in Section 104 clearly conflict with the statutory responsibility of the Director of Central Intelligence to protect intelligence sources and methods and raise our strong objection to S. 1726. The Director could be

faced with a court order to declassify intelligence overriding his determination that disclosure would reveal sources and methods. Regardless of the outcome of the court action, sensitive information would be disclosed in open court. Also, anyone can petition court action to force disclosure of any classified information without showing any interest, whereas, the Government is forced to prove a national interest to protect the information involved.

There are other provisions in Section 104 of S. 1726 which also raise serious problems for this Agency. The more significant are:

a. The authority granted to the Comptroller General to oversee the protection of information in Government, investigate allegations of improper classification, and inspect Agency classification programs can conflict with the Director's statutory responsibilities.

b. Since much of our classified material involves sources and methods, its sheer volume would make it impossible for a Head of an Agency to personally justify in writing and in detail the reasons for continuation of classification every two years. Such a program would require an annual

review of hundreds of thousands of documents and the preparation of detailed justification for continuation of protection.

c. The requirement to furnish quarterly to the Comptroller General and upon request to any member or committee of Congress the names and addresses of all persons who have authority to classify information is in conflict with Section 6 of the Central Intelligence Agency Act of 1949 (50 U.S.C.A. 403g) which exempts the Agency from the provisions of any law requiring the disclosure of the names of any of its employees.

d. The one designation "Secret Defense Data" by not recognizing any varying degrees of sensitivity will not provide adequate protection to the most sensitive information. A clearly recognized and understood classification such as "Top Secret" not only provides ready identification but aids in proper protective handling.

e. The requirement that individual paragraphs or segments of a document be identified as needing protection would create, in many cases, an intolerable administrative burden. Executive Order 11652

recognizes this problem and requires this be done only to the extent practicable.

For the above reasons, this Agency strongly opposes enactment of S. 1726. We offer no comments on other sections of the bill except to note that Title V - COMMUNICATIONS MEDIA PRIVILEGE would protect the identity of all persons furnishing any information to the media, including the foreign press, regardless of any indications of criminality in the acquisition of the information involved.

The Office of Management and Budget advises there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

W. E. Colby
Director

ROUTING AND RECORD SHEET

SUBJECT: (Optional) S. 1726, A Bill to Amend the Freedom of Information Act

OLC 74-0206

FROM: Howard J. Osborn
Director of Security

EXTENSION: 6777

NO.

DATE: 12 FEB 1974

TO: (Officer designation, room number, and building)	DATE RECEIVED	DATE FORWARDED	OFFICER'S INITIALS	COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)
1. Legislative Counsel Attn: [redacted]				
2. Rm. 7 D 35				
3.				
4.				
5.				
6.				
7.				
8.				
9.				
10.				
11.				
12.				
13.				
14.				
15.				

STATINTL